BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Mary E. Johnson	)
	Map 155-00-0, Parcel 121.00	) Davidson County
	Commercial Property	)
	Tax Year 2005	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,402,600	$ -0-	$1,402,600	$561,040

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 10, 2006 in Nashville, Tennessee. In attendance at the hearing were Mary E. Johnson, the appellant, A. Harrison Johnson, Jr., Esq. and Davidson County Property Assessor's representative Dennis Donovan, MAI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 8.42 acre tract located on the east side of Highway 100, north of Chaffin Drive in the Bellevue section of Nashville, Tennessee. Out of the 8.42 acres, 5.00 acres is zoned CL (commercial limited) and 3.42 acres is zoned OL (office limited).

The taxpayer contended that subject property should be valued at $86,900 as it was prior to the 2005 countywide reappraisal. In support of this position, the taxpayer argued that only a small portion of subject tract is suitable for development because of its irregular shape, topography, set back requirements, a 20' wide sewer easement, and its partial location in the flood plain.

The taxpayer essentially asserted that the appraisal of subject property should not have been increased because the value and utility of the tract has not changed. Alternatively, the taxpayer asserted that Mr. Donovan's own analysis would support a drastically lower value if only the 8,000 feet of frontage along Highway 100 was valued at $5.00 per square foot.

The assessor contended that subject property should be valued at $1,238,000. In support of this position, sales of two tracts adjoining subject property were introduced into evidence. Mr. Donovan maintained that those sales support valuing the CL zoned land and OL zoned land at $5.00 per square foot and $1.00 per square foot respectively. This results in a total value of $1,238,000 after rounding.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at $1,238,000 as contended by the assessor of property.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the prior appraisal of subject property was made in conjunction with the last countywide reappraisal and simply has no relevance.

The administrative judge finds merely reciting factors that could cause a dimunition in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted

> from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

Based upon the foregoing, the administrative judge would normally affirm the current appraisal of subject property based upon the presumption of correctness attaching to the decision of the Metropolitan Board of Equalization. In this case, however, the administrative judge finds that Mr. Donovan's analysis should be adopted insofar as it establishes the upper limit of value.

In concluding that subject property should be appraised at $1,238,000, the administrative judge has relied on the evidence currently in the record. The administrative judge recognizes that additional proof from the taxpayer could possibly support adoption of a significantly lower value. Respectfully, the administrative judge finds no expert testimony was introduced by the taxpayer. Absent such evidence, the administrative judge finds any loss in value due to the previously summarized factors cannot be quantified.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,238,000	$ -0-	$1,238,000	$495,200

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which

relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of January, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: A. Harrison Johnson, Jr., Esq.
Jo Ann North, Assessor of Property